

1-1-1978

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### Recommended Citation

Philip F. Spillane, *THE INVENTORY SEARCH: THE AFTERMATH OF South Dakota v. Opperman*, 1 W. New Eng. L. Rev. 101 (1978), <http://digitalcommons.law.wne.edu/lawreview/vol1/iss1/6>

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## THE INVENTORY SEARCH: THE AFTERMATH OF *SOUTH DAKOTA v. OPPERMAN*

The right of the people to be secure, in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.<sup>1</sup>

### I. INTRODUCTION

The fourth amendment has traditionally been viewed as a means of protecting the individual from abuses that grow out of searches and seizures conducted by overzealous law enforcement officials acting under unchecked general authority.<sup>2</sup> It is complemented by the exclusionary rule,<sup>3</sup> which deters unlawful searches and seizures and protects the criminal defendant by forbidding the introduction in criminal prosecutions of evidence obtained in violation of the fourth amendment.<sup>4</sup>

In order to accommodate the overriding needs of the police and society, however, courts have recognized several exceptions to the fourth amendment's warrant requirement. Among these are "hot pursuit,"<sup>5</sup> "stop and frisk,"<sup>6</sup> search of a moving vehicle upon probable cause for an arrest,<sup>7</sup> search in an "emergency situa-

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1. U.S. CONST. amend. IV.

2. *Stanford v. Texas*, 379 U.S. 476 (1965). *See also* *Boyd v. United States*, 116 U.S. 616 (1886).

3. *Weeks v. United States*, 232 U.S. 383 (1914). The rule was originally limited to federal prosecutions, *see* *Wolf v. Colorado*, 338 U.S. 25 (1949), but was expressly held to be binding on the states as well in *Mapp v. Ohio*, 367 U.S. 643 (1961).

4. "[T]he rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect. . . ." *United States v. Calandra*, 414 U.S. 338, 348 (1974).

5. *Warden v. Hayden*, 387 U.S. 294 (1967). This exception allows the police to follow a fleeing suspect into a place of hiding and conduct a warrantless search therein when "the exigencies of the situation [make] that course imperative." *Id.* at 298 (quoting *McDonald v. United States*, 335 U.S. 451, 456 (1948)).

6. *Terry v. Ohio*, 392 U.S. 1 (1968). When a police officer has reason to believe that an individual is about to commit a crime and is armed and potentially dangerous, he may stop him and conduct a search of his person limited in scope to the extent necessary to discover a concealed weapon.

7. *Carroll v. United States*, 267 U.S. 132 (1925). This exception allows an automobile to be stopped on the highway and searched without a warrant provided that the police have probable cause to believe that it contains evidence or contraband. If

tion,"<sup>8</sup> search incident to an arrest,<sup>9</sup> consent,<sup>10</sup> and the "plain view" doctrine.<sup>11</sup> Apart from consent, and possibly the "plain view" doctrine, all of these exceptions have been carved out by the courts to enable the police to investigate probable criminal conduct when the situation makes it impractical for the police to secure a warrant. In those circumstances, the interest of society in the prosecution of criminals outweighs the fourth amendment rights of the suspected criminal.

In 1976, the Supreme Court decided the case of *South Dakota v. Opperman*.<sup>12</sup> That decision established what is generally termed the "inventory search" exception to the warrant requirement. In *Opperman*, the defendant's car had been towed and impounded by the Vermillion, South Dakota police for multiple violations of a municipal parking ordinance. From outside the car at the impound lot, a police officer noticed a watch on the dashboard and other items of personal property on the back seat and back floorboard. The car was unlocked at the officer's direction, and, using a standard inventory form pursuant to standard police procedure,<sup>13</sup> the

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its occupants are arrested at the scene, the search may be postponed until the car is brought to the police station. *Chambers v. Maroney*, 399 U.S. 42 (1970).

8. *Schmerber v. California*, 384 U.S. 757 (1966). When a police officer reasonably believes that he is "confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threaten[s] 'the destruction of evidence,'" he may proceed without a warrant under this exception. *Id.* at 770 (quoting *Preston v. United States*, 376 U.S. 364, 367 (1963)).

9. *Chimel v. California*, 395 U.S. 752 (1969). Once an arrest has been made, this exception allows the arresting officer to search the arrestee's person to discover and remove weapons, to seize evidence to prevent its concealment or destruction, and to search the area "within the immediate control" of the arrestee, construed by the Court to mean the area from which he might gain possession of a weapon or destructible evidence. *Id.* at 762-63.

10. *Bumper v. North Carolina*, 391 U.S. 543 (1968). This exception recognizes that the fourth amendment right to the protection of the warrant requirement can be waived by consent, provided that consent is "freely and voluntarily given." *Id.* at 548.

11. *Coolidge v. New Hampshire*, 403 U.S. 443, 467-69 (1971). Under the plain view doctrine, once the police have made a legitimate intrusion, justified either by a warrant, by an exception to the warrant requirement, or by valid extraneous reasons, they may seize evidence inadvertently discovered in "plain view."

12. 428 U.S. 364 (1976).

13. A complete "inventory report" was required of all vehicles impounded by the Vermillion Police Department. The standard inventory consists of a survey of the vehicle's exterior, including windows, fenders, and trunk, and its interior, to locate "valuables" for storage. As part of each inventory, a standard report form is completed. The report in *Opperman* listed the items discovered in both the automobile's interior and the unlocked glove compartment. The only notation regarding the trunk was that it was locked. A police officer testified at trial that all impounded vehicles are searched, that the search always includes the glove compartment, and that the trunk had not been searched because it was locked. 428 U.S. at 380 n.6.

officer inventoried the contents of the car. A small quantity of marijuana was found inside the unlocked glove compartment. All items, including the marijuana, were removed to the police department for safekeeping. Opperman was arrested for possession of marijuana when he appeared at police headquarters to claim his property. At trial, the defendant's motion to suppress the evidence was denied and he was convicted. On appeal, the Supreme Court of South Dakota reversed, holding that the evidence had been obtained in violation of the fourth amendment.<sup>14</sup> The Supreme Court granted certiorari<sup>15</sup> and again reversed.<sup>16</sup> *Opperman* stands for the proposition that a warrant is not required for a routine, noninvestigative inventory of the items of personal property found in a lawfully impounded vehicle, and that evidence discovered in this manner is admissible in a subsequent criminal prosecution.

The inventory search and its underlying rationale differ from the other recognized exceptions to the warrant requirement in several important respects. Unlike all of the other exceptions, the inventory search, as authorized by *Opperman*, does not take place in the context of a criminal investigation. The typical inventory search occurs after the police have lawfully impounded a motor vehicle, and is undertaken as an exercise of the police department's "community caretaking functions."<sup>17</sup> Because of this noncriminal setting, the probable cause rationale, which underlies the other exceptions to the warrant requirement, is inapplicable to the inventory search exception.<sup>18</sup> The inventory search is based instead upon three governmental and societal interests: (1) The protection of the owner's property while it is in police custody; (2) the protection of the police against claims or disputes over lost or stolen property; and, (3) the protection of the police and the public from potential danger.<sup>19</sup>

Before *Opperman*, courts and commentators had widely debated the constitutionality of the inventory search procedure. Proponents of the exception argued that the practice represents a

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14. *State v. Opperman*, 228 N.W.2d 152 (S.D. 1975).

15. 423 U.S. 923 (1975).

16. 428 U.S. at 376.

17. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

18. "The standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures." 428 U.S. at 370 n.5. The absence of probable cause is essential to the applicability of the inventory search exception, since the policies underlying the warrant requirement come into play when the police officer has reason to believe that the object to be searched contains evidence of crime or contraband. See note 93 *infra* and accompanying text.

19. 428 U.S. at 369.

"reasonable" intrusion into the privacy of the individual and is justified because it protects important governmental and societal interests.<sup>20</sup> Its opponents, on the other hand, contended that the inventory search was unconstitutional, notwithstanding its administrative rationale, because it enables the police and the courts to circumvent and subvert the fourth amendment and the exclusionary rule.<sup>21</sup>

In light of the Supreme Court's decision in *Opperman*, it is no longer fruitful to argue that warrantless inventory searches of automobiles are unconstitutional. This article focuses instead on an analysis of the decision and selected lower court cases in which it has been applied. Lower courts have frequently applied the rule announced in *Opperman* far too broadly as a result of the failure of the majority opinion to clearly explain the standard it established for the applicability of the inventory search exception.<sup>22</sup> Chief Justice Burger, writing for the majority, chose instead to employ sweeping language, sacrificing precision and clarity of reasoning in the process.

This article seeks to clarify the confusion currently surrounding the inventory search doctrine. In order to accomplish this purpose, it will be necessary to consider two questions: (1) Based upon *South Dakota v. Opperman*, under what circumstances may a warrantless search and seizure be upheld under the inventory search exception? (2) May the inventory search exception be extended beyond those circumstances without violating the fourth amendment? These questions will be approached by first placing the *Opperman* decision within the framework which the federal courts have developed for the analysis of fourth amendment cases; and, second, by tracing and analyzing the development of the inventory search doctrine in subsequent cases in light of *Opperman*.

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20. See, e.g., *United States v. Gravitt*, 484 F.2d 375 (5th Cir. 1973), *cert. denied*, 414 U.S. 1135 (1974); *United States v. Mitchell*, 458 F.2d 960 (9th Cir. 1972); *City of St. Paul v. Myles*, 298 Minn. 298, 218 N.W.2d 697 (1974); *Cabbler v. Commonwealth*, 212 Va. 520, 184 S.E.2d 781, *cert. denied*, 405 U.S. 1073 (1972).

21. Moylan, *The Inventory Search of an Automobile: A Willing Suspension of Disbelief*, 5 U. BALT. L. REV. 203 (1976); Note, *The Inventory Search: A Fourth Amendment Dilemma*, 1 OHIO N.L. REV. 344 (1974).

22. See, e.g., *United States v. McCambridge*, 551 F.2d 865 (1st Cir. 1977); *United States v. Friesen*, 545 F.2d 672 (9th Cir. 1976), *cert. denied*, 97 S. Ct. 2980 (1977); *United States v. Diggs*, 544 F.2d 116 (3d Cir. 1976); *United States v. Morrow*, 541 F.2d 1229 (7th Cir. 1976), *cert. denied*, 430 U.S. 933 (1977); *United States v. Speers*, 429 F. Supp. 188 (W.D. Okla. 1977). These cases will be discussed in detail in Part III *infra*.

## II. THE INVENTORY SEARCH: A FRAMEWORK FOR ANALYSIS

### A. *Background*

Prior to the Supreme Court's decision in *Opperman*, federal and state courts were divided on several issues involved in the inventory search procedure. A threshold question was whether the inventory procedure constituted a "search" within the meaning of the fourth amendment. Given the assertedly "benign" purpose for which the inventory is undertaken, some courts had held that the inventory is not a "search" for purposes of the fourth amendment, or had expressed doubts as to whether it could be classified as a search.<sup>23</sup> Other courts rejected this view, holding that an inventory constitutes a substantial invasion into the privacy of the vehicle owner and is therefore a "search," governed by the fourth amendment, regardless of the motives of the police in conducting the inventory.<sup>24</sup> Those jurisdictions that recognized the inventory as a fourth amendment "search" disagreed about the extent to which the inventory could proceed once the police entered the vehicle. Some cases held that an inventory extending beyond those items in "plain view" was unreasonable under the fourth amendment.<sup>25</sup> Other cases upheld inventory searches that uncovered evidence not in plain view.<sup>26</sup>

The *Opperman* decision succeeded in resolving at least some of the questions that had divided the lower courts. First, it established that the inventory procedure is a "search" for purposes of the fourth amendment.<sup>27</sup> Second, since the evidence in question

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23. *St. Clair v. State*, 1 Md. App. 605, 232 A.2d 565 (1967); *People v. Willis*, 46 Mich. App. 436, 440-41, 208 N.W.2d 204, 206 (1973); *State v. Wallen*, 185 Neb. 44, 173 N.W.2d 372, *cert. denied*, 399 U.S. 912 (1970); *People v. Sullivan*, 29 N.Y.2d 69, 272 N.E.2d 464, 323 N.Y.S.2d 945 (1971).

24. *United States v. Lawson*, 487 F.2d 468, 472 (8th Cir. 1973); *Boulet v. State*, 17 Ariz. App. 64, 68, 495 P.2d 504, 508 (1972), *vacated*, 109 Ariz. 433, 511 P.2d 168 (1973); *Mozzetti v. Superior Court*, 4 Cal. 3d 699, 706, 484 P.2d 84, 88, 94 Cal. Rptr. 412, 420 (1971); *State v. Keller*, 265 Or. 622, 629, 510 P.2d 568, 570 (1973).

25. *Mozzetti v. Superior Court*, 4 Cal. 3d 699, 711, 484 P.2d 84, 92, 94 Cal. Rptr. 412, 420 (1971); *State v. Keller*, 265 Or. 622, 629, 510 P.2d 568, 570 (1973).

26. *Denson v. State*, 128 Ga. App. 456, 197 S.E.2d 156 (1973); *Jackson v. State*, 243 So.2d 396 (Miss. 1970), *aff'd after reversal on other grounds*, 261 So.2d 126 (Miss. 1972).

27. Since the state had, at oral argument, abandoned its contention that the inventory was exempt from the fourth amendment, the Supreme Court found it unnecessary to directly hold that the inventory procedure is or is not a search within the meaning of the fourth amendment. See 428 U.S. at 370 n.6. However, by applying the fourth amendment standard of "reasonableness" the Court implicitly con-

was found in the closed glove compartment of the defendant's automobile, it is now clear that an inventory search cannot be invalidated simply because the inventory uncovered items not in plain view.<sup>28</sup> Despite the resolution of these questions, however, lower courts have displayed considerable confusion in their attempts to apply the *Opperman* standard.<sup>29</sup>

Although *Opperman* was decided in 1976, the Supreme Court had set the stage for the decision with a series of opinions beginning in 1967. Unlike *Opperman*, however, each of these decisions involved a prior arrest. In *Cooper v. California*,<sup>30</sup> the defendant had been arrested on a narcotics charge and his automobile impounded pursuant to a California statute providing for the forfeiture of any vehicle used in connection with a narcotics offense.<sup>31</sup> The defendant was convicted partly on the basis of evidence found in a police inventory of the vehicle. The Court upheld the search on the ground that under the statute the police had a possessory interest in the car which could have lasted for several months, stating that "[i]t would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it."<sup>32</sup>

The following term, the Court decided *Harris v. United States*.<sup>33</sup> In *Harris*, the defendant's car had been impounded after he was arrested for robbery. Pursuant to a police regulation, the arresting officer conducted an inventory search of the car. Finding nothing of significance, the officer opened the passenger side door in order to roll up the window and lock the door. At that point, he noticed an automobile registration card lying on the metal stripping

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ceded that an inventory is a fourth amendment "search." Justice Powell recognized in a concurring opinion that routine inventory searches intrude upon an area in which the individual citizen has a "reasonable expectation of privacy," and thus, despite their "benign" purpose, constitute searches for fourth amendment purposes. *Id.* at 377 n.1.

28. Since the defendant's glove compartment was unlocked in *Opperman*, the decision leaves unanswered the question whether the police will ever be justified in forcing open a locked glove compartment or console for the purpose of conducting an inventory search. It would seem that an individual maintains a higher expectation of privacy with respect to a locked glove compartment than he does with respect to his automobile in general and that he would therefore be entitled to a greater degree of fourth amendment protection. See note 92 *infra* and accompanying text.

29. This problem will be discussed in Part III *infra*.

30. 386 U.S. 58 (1967).

31. *Id.* at 60.

32. *Id.* at 61-62.

33. 390 U.S. 234 (1968).

of the door. The card belonged to the robbery victim and was admitted into evidence at trial over the defendant's motion to suppress. The Supreme Court held that the card had not been discovered by means of an illegal search, and that the intrusion was justifiable as a "measure taken to protect the car while it was in police custody."<sup>34</sup>

*Opperman* relied heavily on *Cady v. Dombrowski*.<sup>35</sup> In that case, a Chicago police officer had been involved in an automobile accident in a small town in Wisconsin. He was arrested for drunken driving and was taken to a hospital where he lapsed into a coma. Mistakenly assuming that Chicago police were required to carry their service revolvers with them at all times, the local police searched the car, including the trunk, to retrieve the weapon. Evidence found in the trunk led to the defendant's arrest and conviction for murder. In upholding the search as a protective measure in furtherance of the police department's "community caretaking functions," the Court was careful to indicate that the search was carried out in accordance with "standard procedures." Later, in *Opperman*, the Court pointed to this factor as tending to "ensure that the intrusion would be limited in scope to the extent necessary to carry out the caretaking function."<sup>36</sup>

None of these cases squarely presented the issue which arose in *Opperman*: Whether a routine inventory search of a lawfully impounded vehicle is permissible under the fourth amendment absent a prior arrest. However, the Court drew upon principles enunciated in each of these decisions in support of its holding in *Opperman*.<sup>37</sup>

#### B. *The Opperman Decision*

*Opperman* was decided by a 5-4 vote. The majority opinion, written by Chief Justice Burger, first noted the "well-settled distinction" traditionally drawn between automobiles and homes or offices in relation to the fourth amendment. This distinction, which has resulted in "less rigorous" warrant requirements for searches of automobiles than for searches of homes or offices,<sup>38</sup> was said to be

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34. *Id.* at 236.

35. 413 U.S. 433 (1973).

36. 428 U.S. at 375.

37. See note 46 *infra* and accompanying text.

38. 428 U.S. at 367. This distinction was first recognized in the case of *Carroll v. United States*, 267 U.S. 132 (1925). Although the decision has frequently been cited in support of an "automobile exception" to the warrant requirement, this ex-



based upon "the inherent mobility of automobiles [which] creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible."<sup>39</sup> Further, the Court noted that less rigorous warrant requirements govern because "the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office."<sup>40</sup> The Court found that this "diminished expectation of privacy" was justified because of "the obviously public nature of automobile travel," and because "automobiles, unlike homes, are subject to pervasive and continuing governmental regulation and controls. . . ."<sup>41</sup>

After having established that searches of automobiles are to be subjected to a less stringent warrant requirement than are searches of homes or offices, the Court discussed the routine inventory search of impounded vehicles by local police officers and the governmental interests upon which the procedure is based.<sup>42</sup> Chief Justice Burger then briefly reviewed the reasons for the inapplicability of the warrant requirement to the inventory search. He first stated that a probable cause inquiry was inappropriate because that standard is "peculiarly related to criminal investigations, not routine, noncriminal procedures."<sup>43</sup> He observed that "the warrant requirement assures that legal inferences and conclusions as to probable cause will be drawn by a neutral magistrate unrelated to the criminal investigative-enforcement process,"<sup>44</sup> concluding that "[w]ith respect to noninvestigative police inventories of automobiles lawfully within governmental custody, . . . the policies underlying the warrant requirement . . . are inapplicable."<sup>45</sup>

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ception is limited to a specific set of circumstances, and is totally unrelated to the inventory search exception. See notes 81-113 *infra* and accompanying text.

39. 428 U.S. at 367.

40. *Id.* (footnote omitted).

41. *Id.* at 368.

42. *Id.* at 369. See note 19 *supra* and accompanying text.

43. 428 U.S. at 370 n.5. The Court continued: "The probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations." *Id.* (emphasis added). Although the Court chose to include this particular discussion in a footnote, this language is crucial to an understanding of the *Opperman* standard. As will be discussed in Part III *infra* a major problem to be found in some of the later cases in this area has been the failure of courts to recognize that the inventory search exception cannot be applied, consistent with *Opperman*, in the context of a criminal investigation.

44. *Id.*

45. *Id.* At this point, the Court referred with approval to Justice Powell's concurring opinion, which analyzed in depth the policies underlying the warrant requirement and the reasons why those policies do not apply to the inventory search.

After a brief discussion of *Cooper*, *Harris*, and *Cady*,<sup>46</sup> the Court listed the facts and circumstances relied upon to justify its decision.<sup>47</sup> According to the Court, the crucial facts of the case were: (1) The police were "indisputably engaged in a caretaking search of a lawfully impounded vehicle," (2) the owner was not present to make other arrangements for the safekeeping of his belongings, (3) the inventory itself was "prompted by the presence in plain view of a number of valuables inside the car," (4) the police followed standard procedures in conducting the search, and, (5) there was "no suggestion whatever that this standard procedure, essentially like that followed throughout the country, was a pretext concealing an investigatory police motive."<sup>48</sup> The Court concluded that, "in following standard police procedures prevailing throughout the country and approved by the overwhelming majority of courts, the conduct of the police was not 'unreasonable' under the Fourth Amendment."<sup>49</sup>

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This reference adds considerable weight to Justice Powell's opinion, allowing it to be considered along with the majority opinion for purposes of constructing a standard for the constitutionality of inventory searches. This is particularly useful because the Powell opinion analyzed the issues raised by the inventory search procedure in terms of well-settled principles of fourth amendment analysis, thereby placing the decision within the general framework of fourth amendment law. See notes 59-63 *infra* and accompanying text.

46. See notes 30-36 *supra* and accompanying text. In his concurring opinion, Justice Powell recognized that each of these decisions involved significant factors not found in *Opperman*. *Harris* involved an application of the plain view doctrine, while *Cooper* was based upon a statutorily created possessory interest of potentially much longer duration than is generally the case in a routine impoundment. *Cady* was distinguishable in that the police were acting under a reasonable assumption as to the contents of the car, whereas, in the typical inventory search situation, the police have no reasonable belief as to the particular automobile's contents. 428 U.S. at 377 n.2.

In spite of these factual distinctions, the majority opinion cited these cases as "point[ing] the way to the correct resolution in [*Opperman*]," *id.* at 375, thereby unifying analogous case law under a decision which for the first time squarely faced the issues presented by the inventory search procedure. Although not directly cited for the proposition, it can be seen that each of these cases, in turn, provides the underlying rationale for each of the governmental and societal interests relied upon by the Court as justifications for the inventory search in *Opperman*. See note 19 *supra* and accompanying text.

47. At this point, the Court carefully explained that "as in all Fourth Amendment cases, we are obliged to look to all the facts and circumstances of this case in light of the principles set forth in . . . prior decisions." 428 U.S. at 375. As will be discussed in Part III *infra* the major flaw in the reasoning of some of the later cases which purport to follow *Opperman* has been the tendency to apply the rule of *Opperman* when a careful analysis of the facts and circumstances could have revealed that *Opperman* was inapposite to the particular case.

48. *Id.* at 376.

49. *Id.*

Justice Powell's concurring opinion clarified the reasoning of the majority opinion. His analysis centered on two questions: (1) Whether routine inventory searches are permissible, and, (2) if so, whether they must be conducted pursuant to a warrant.<sup>50</sup>

The first question was resolved by balancing the three governmental and societal interests set out by the majority opinion as justifications for the inventory search<sup>51</sup> against the constitutionally protected interest of the individual citizen in the privacy of his effects. Although Justice Powell recognized that there is generally little danger associated with impounding unsearched automobiles, he noted that there are no viable alternative means to identify in advance the rare case that may involve a potential hazard to the police or the public. For this reason, he found that the interest in protecting the police from potential danger was a valid justification for the inventory search.<sup>52</sup>

Justice Powell noted that the interest in protecting the police against claims or disputes over lost or stolen property was not relevant to the decision in *Opperman*. This was so because the Supreme Court of South Dakota had held that removing the objects in plain view and locking the doors of the car satisfied any duty the police department owed to the automobile's owner with respect to the property inside the automobile.<sup>53</sup> However, he recognized a broader interest which society has in maintaining the community's respect for law enforcement generally and in preserving police department morale.<sup>54</sup> Justice Powell did agree, however, that the protection of the owner's property is a significant interest for both the policeman and the citizen. Since automobile owners may temporarily leave valuables in a car that they would not leave unattended for the several days that police custody over the car might last, the inventory provides a substantial gain in security by allowing the removal of valuables for storage inside police headquarters.<sup>55</sup>

In weighing these interests against the individual's interest in the privacy of the contents of his automobile, Justice Powell con-

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50. *Id.* at 377. It should be noted that these two questions, although considered by Justice Powell in reverse order, represent the mode of analysis under which fourth amendment cases are generally decided. See note 71 *infra* and accompanying text. See generally *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835 (1974).

51. See note 19 *supra* and accompanying text.

52. 428 U.S. at 378.

53. *Id.* at 378 n.3.

54. *Id.* at 378.

55. *Id.* at 379.

cluded that, notwithstanding the automobile owner's "diminished expectation of privacy," the "unrestrained search of an automobile and its contents would constitute a serious intrusion upon the privacy of the individual in many circumstances."<sup>56</sup> He found, however, that such an intrusion was not present in *Opperman*, since the search was "limited to an inventory of the unoccupied automobile and was conducted strictly in accord with the regulations of the Vermillion Police Department."<sup>57</sup> This kind of "routine inventory search" is constitutionally permissible.<sup>58</sup>

Justice Powell then turned to the question of whether "routine inventory searches" must be conducted pursuant to a warrant. In resolving this question, he explained at length that the policies underlying the warrant requirement were inapplicable in the inventory search situation. He cited two interests which are protected when searches are conditioned on warrants issued by a judicial officer and supported by probable cause. First, the requirement of a warrant protects the individual's legitimate expectation of privacy by "requiring that those inferences [concerning probable cause] be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."<sup>59</sup> A second purpose is "to prevent hindsight from affecting the evaluation of the reasonableness of a search."<sup>60</sup>

In concluding that in the inventory search situation it was not necessary to require the involvement of a "neutral and detached magistrate," Justice Powell emphasized that "[i]nventory searches . . . are not conducted in order to discover evidence of crime," but are "conducted in accordance with established police department rules or policy and occur whenever an automobile is seized."<sup>61</sup> Since, in an inventory search, "[t]he officer does not make a dis-

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56. *Id.* at 379-80.

57. *Id.* at 380 (footnote omitted).

58. *Id.*

59. *Id.* at 383 (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)).

60. *Id.*

61. *Id.* As indicated above, one factor which distinguishes the inventory search exception from the other exceptions to the warrant requirement is that the exception cannot be used in the context of a criminal investigation. See notes 17-19 *supra* and accompanying text. However, as the cases to be discussed in Part III will illustrate, a number of lower court decisions decided after *Opperman* have failed to recognize this distinction, applying *Opperman* to situations where the policies underlying the warrant requirement were clearly applicable. See *United States v. Diggs*, 544 F.2d 116 (3d Cir. 1976); *United States v. Morrow*, 541 F.2d 1229 (7th Cir. 1976), *cert. denied*, 430 U.S. 933 (1977); *United States v. Speers*, 429 F. Supp. 188 (W.D. Okla. 1977).

cretionary determination to search based on a judgment that certain conditions are present," there are "no special facts for a neutral magistrate to evaluate."<sup>62</sup> Justice Powell then concluded that because the inventory search is conducted in accordance with standard procedures, there is "no significant danger of hindsight justification."<sup>63</sup>

Four members of the Court dissented in *Opperman*. Justice Marshall was joined in his opinion by Justices Brennan and Stewart, while Justice White submitted a brief dissenting statement. In Justice Marshall's view, the diminished expectation of privacy associated with automobiles does not support a relaxed warrant requirement for searches into closed areas of the automobile, such as the glove compartment. He argued that "the nature and substantiality of interest required to justify a search of private areas of an automobile is no less than that necessary to justify an intrusion of similar scope into a home or office."<sup>64</sup>

Justice Marshall then urged that none of the governmental and societal interests relied upon by the majority and concurring opinions, "separately or together, can suffice to justify the inventory search procedure approved by the Court."<sup>65</sup> He reasoned that two of these needs were not present in the facts of the case. Although he recognized that "the safety rationale may not be entirely discounted when it is actually relied upon,"<sup>66</sup> he argued that this justification could not be relied upon in *Opperman*, since "the sole purpose given by the State for the Vermillion police's inventory procedure was to secure *valuables*."<sup>67</sup> Justice Marshall then pointed to the South Dakota Supreme Court's interpretation of state law which absolved the police from any obligation beyond inventorying objects in plain view and locking the car, thus eliminating any need to protect the police from claims concerning property left in the glove compartment. He insisted that, in order for a search to be upheld solely upon the justification of protecting the owner's property, the police must have secured the owner's consent prior to the search, or, in the alternative, that the search may proceed only after reasonable efforts to identify the owner and secure his consent

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62. 428 U.S. at 383.

63. *Id.*

64. *Id.* at 388.

65. *Id.* at 389.

66. *Id.* at 390.

67. *Id.* at 389 (emphasis in the original).

have proved unsuccessful.<sup>68</sup> Justice Marshall concluded that “[t]he Court’s result in this case elevates the conservation of property interests—indeed mere possibilities of property interests—above the privacy and security interests protected by the Fourth Amendment.”<sup>69</sup>

C. *The Opperman Standard: Prerequisites  
to the Constitutionality of the Inventory Search*

Several principles may be extracted from the majority and concurring opinions in *Opperman* which together provide a standard applicable to inventory searches in later cases. This section will set out the circumstances under which a warrantless search and seizure may be upheld under the *Opperman* inventory search exception. The following section will consider whether the inventory search exception may be extended beyond those circumstances without violating the fourth amendment.

Under the approach currently favored by the Supreme Court,<sup>70</sup> the analysis of the constitutionality of a search and seizure

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68. *Id.* at 394. Chief Justice Burger answered this argument in the final footnote of the majority opinion:

The “consent” theory advanced by the dissent rests on the assumption that the inventory is exclusively for the protection of the car owner. It is not. The protection of the municipality and public officers from claims of lost or stolen property and the protection of the public from vandals who might find a firearm, *Cady v. Dombrowski*, . . . or as here, contraband drugs, are also crucial.

*Id.* at 376 n.10. This dialogue reveals one of the basic differences between the opinions of Justice Marshall and Chief Justice Burger in *Opperman*. Whereas Justice Marshall refused to recognize the validity of governmental interests as justifications for an inventory search when those interests are not present in the facts of the case, Chief Justice Burger was willing to hold that these property and security interests are significant enough to justify inventory searches *generally* even when two of the three interests cited were not actually relied upon in the *particular* case under consideration.

69. *Id.* at 395-96.

70. In determining the constitutionality of a search and seizure for purposes of the fourth amendment, the Supreme Court had formerly taken the view that the standard of “reasonableness” depended upon the totality of circumstances in the particular case, and was not dependent upon the practicability of procuring a search warrant in a given instance. *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950). However, that view was subsequently overruled in *Chimel v. California*, 395 U.S. 752 (1969). Since then the Court has consistently recognized that “the definition of ‘reasonableness’ turns, at least in part, on the more specific commands of the warrants clause.” *United States v. United States Dist. Court*, 407 U.S. 297, 315 (1972). Indeed, although the Court has stated that “searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable

under the fourth amendment must proceed upon two levels: First, one must ask whether the search is to be held unlawful because of the failure to obtain a prior search warrant; and, second, even if a warrant is not required, one must ask whether the warrantless search is nonetheless reasonable.<sup>71</sup> The first part of this standard requires that the search and seizure fall within one of the recognized exceptions to the warrant requirement,<sup>72</sup> or, that the failure to obtain prior judicial approval be justified by "exceptional circumstances."<sup>73</sup> Resolution of the second question, the reasonableness requirement, involves a weighing of the governmental and societal interests advanced to justify such intrusions against the constitutionally protected interest of the individual citizen in the privacy of his effects.<sup>74</sup> Therefore, in analyzing the *Opperman* decision, the first inquiry is whether there is a justification for the status of the inventory search as an exception to the warrant requirement. The second inquiry involves a consideration of the "reasonableness" of a warrantless inventory search.

In *Katz v. United States*,<sup>75</sup> the Court established the principle that the fourth amendment protects the individual wherever he or

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under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions," *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnotes omitted), it has apparently retreated from this position in recent decisions. See *South Dakota v. Opperman*, 428 U.S. 364, 373 (1976) ("The test of reasonableness cannot be fixed by *per se* rules; each case must be decided on its own facts.") (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 509-10 (1971)) (Black, J., concurring and dissenting).

71. Note, *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835, 836 (1974). Although the decisions rarely state this two-part test with any degree of precision, this mode of analysis has been applied, at least implicitly, in most of the recent cases decided under the fourth amendment. For a direct application of the test, see *Cady v. Dombrowski*, 413 U.S. 433, 443 (1973). See also *Terry v. Ohio*, 392 U.S. 1 (1968); *Camara v. Municipal Court*, 387 U.S. 523 (1967). Cf. *United States v. United States Dist. Court*, 407 U.S. 297 (1972) (case was resolved under the first part of the test, making it unnecessary for the court to consider the second part). The majority opinion in *Opperman* failed to clearly articulate an application of this standard, focusing instead upon its "reasonableness" aspect. Justice Powell's concurring opinion, however, to which the majority opinion refers, succinctly reviews the facts and circumstances of the case, proceeding upon both levels of analysis. See notes 50-63 *supra* and accompanying text.

72. See notes 5-11 *supra* and accompanying text.

73. *McDonald v. United States*, 335 U.S. 451 (1948); *Johnson v. United States*, 333 U.S. 10 (1948).

74. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *United States v. Ortiz*, 422 U.S. 891 (1975); *Terry v. Ohio*, 392 U.S. 1 (1968); *Camara v. Municipal Court*, 387 U.S. 523 (1967).

75. 389 U.S. 347 (1967).

she maintains a "reasonable expectation of privacy."<sup>76</sup> Several decisions of the Supreme Court have established that the individual enjoys a "diminished" expectation of privacy with respect to automobiles.<sup>77</sup> However, this expectation of privacy is not "diminished" to the extent that, in the absence of other significant considerations, the fourth amendment's warrant requirement is inapplicable whenever an automobile is searched.<sup>78</sup> In the words of Justice Stewart, "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."<sup>79</sup>

Although this diminished expectation of privacy is not by itself sufficient to create a general exception to the warrant requirement, the Supreme Court has recognized that, when other compelling circumstances are present, searches of automobiles may be conducted without a warrant. Thus, in *Carroll v. United States*,<sup>80</sup> the Court held that an automobile may be stopped on the highway and searched without a warrant provided that the police have probable cause to believe that the automobile contains articles that the officers are entitled to seize.<sup>81</sup> The decision in *Carroll* was grounded upon the "exigent circumstances" surrounding a mobile vehicle.

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76. *Id.* (opinion of the Court and concurring opinion of Mr. Justice Harlan). In the *Katz* case, the Court held that electronic surveillance by means of a listening device attached to the outside of a public telephone booth constituted a search and seizure within the meaning of the fourth amendment. The failure to obtain prior judicial approval of the surveillance through a warrant rendered the surveillance unlawful. *Id.* at 353, 359. The decision in *Katz* rejected any formulation of fourth amendment issues in terms of "constitutionally protected areas." See, e.g., *Berger v. New York*, 388 U.S. 41, 59 (1967); *Lopez v. United States*, 373 U.S. 427, 438-39, *cert. denied*, 375 U.S. 870 (1963); *Silverman v. United States*, 365 U.S. 505, 512 (1960). The Court centered its analysis instead upon the concept of individual privacy. In making this conceptual shift, the Court overruled the so-called "trespass" doctrine, which was based upon the notion that the fourth amendment applied only to searches and seizures of tangible property and required an actual seizure of the person or a physical invasion of the individual's house or its "curtilage." See *Goldman v. United States*, 316 U.S. 129 (1942); *Olmstead v. United States*, 277 U.S. 438 (1928).

77. *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976); *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974); *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (Powell, J., concurring).

78. See *Cardwell v. Lewis*, 417 U.S. 583 (1974). "[T]he exercise of a desire to be mobile does not, of course, waive one's right to be free of unreasonable government intrusion." *Id.* at 591. See also *Chambers v. Maroney*, 399 U.S. 42 (1970). "[None of the] cases in this Court require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without the extra protection for privacy that a warrant affords." *Id.* at 50.

79. *Coolidge v. New Hampshire*, 403 U.S. 443, 461-62 (1971).

80. 267 U.S. 132 (1925).

81. *Id.* at 156.



The Court noted that when an automobile is stopped on the highway, "it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."<sup>82</sup>

The rule of *Carroll* was extended in *Chambers v. Maroney*<sup>83</sup> to reach the situation where, given the requisite "exigent circumstances" and probable cause when the car's occupants are arrested, the car is impounded and later searched at the police station.<sup>84</sup> These decisions illustrate that in some instances an automobile may be searched without a warrant, while in similar situations a warrant would be required for a search of a home, office, or other fixed structure.<sup>85</sup>

*Opperman* represents another application of the principle that the diminished expectation of privacy associated with the automobile, combined with the proper circumstances, will permit a warrantless automobile search. A warrant is not required for an inventory search of an automobile because the search is supposedly conducted in a noncriminal context, with a noninvestigatory motive, so that the policies underlying the warrant requirement are inapplicable.<sup>86</sup> However, the Supreme Court has held that this is not a sufficient justification for avoiding the warrant requirement when a building, as opposed to an automobile, is the subject of the search.

For example, in *Camara v. Municipal Court*,<sup>87</sup> the Court held that absent consent, a warrant was required to conduct an area-wide building code inspection of an apartment building, even though the search could be made without cause to believe that

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82. *Id.* at 153. See also *Brinegar v. United States*, 338 U.S. 160 (1949); *Husty v. United States*, 282 U.S. 694 (1931).

83. 399 U.S. 42 (1970).

84. *Id.* at 52. The significance of the element of "exigent circumstances" to the *Carroll/Chambers* doctrine was demonstrated in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). In *Coolidge*, the defendant was arrested at his home for murder after an extensive police investigation. Although the house had been heavily guarded, and the defendant had had no access to his car, the police towed the defendant's automobile to the police station and searched it the next day. The Supreme Court refused to apply the *Carroll/Chambers* doctrine, holding that, under those facts, there were no "exigent circumstances" making it impracticable to secure a valid warrant. *Id.* at 462.

85. But see *Agnello v. United States*, 269 U.S. 20 (1925). "Belief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant. . . . [S]uch searches are held unlawful notwithstanding facts unquestionably showing probable cause." *Id.* at 33.

86. See notes 43-45 & 59-63 *supra* and accompanying text.

87. 387 U.S. 523 (1967).

there were violations in the particular building being searched. The Court reasoned that it would be "surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."<sup>88</sup> Similarly, in *See v. City of Seattle*,<sup>89</sup> the Court held that a warrant was required to effect a nonconsensual administrative entry and inspection of a locked commercial warehouse to ascertain compliance with the Seattle Fire Code.<sup>90</sup> Both of these cases stand for the proposition that the warrant requirement applies even in a noncriminal administrative context. Since *Opperman* involved an administrative search of an automobile, it was the additional factor of a "diminished expectation of privacy" that permitted the search to be conducted without a warrant.<sup>91</sup>

One controlling principle emerges from the foregoing discussion. The inventory search exception to the warrant requirement announced in *Opperman* applies only in situations in which there is a combination of two factors: (1) A "diminished expectation of privacy" with respect to the object to be searched,<sup>92</sup> and, (2) the ab-

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88. *Id.* at 530 (footnotes omitted).

89. 387 U.S. 541 (1967).

90. *Id.* at 546.

91. At this point, an analogy may be drawn between inventory searches and other "administrative" searches, specifically, safety inspections. While *Camara* required a warrant where the inspection involved a residence, routine safety inspections of automobiles have never required warrants. *South Dakota v. Opperman*, 428 U.S. at 367 n.2. This difference in treatment is likewise attributable to the "constitutional difference" between automobiles and fixed structures, which provides the justification for allowing safety inspections and other "administrative" searches, such as inventories, to be undertaken without a warrant when the inspection or search involves an automobile.

It should be noted that the Supreme Court has recognized the existence of a "diminished expectation of privacy" with respect to commercial premises in certain situations. In *United States v. Biswell*, 406 U.S. 311 (1972) the court upheld a warrantless search pursuant to a federal statute, of a locked gun storeroom in a pawn shop operated by a licensed gun dealer. In distinguishing, the *See* case, the Court pointed to the overriding importance of the urgent federal interest in regulating the sale of firearms and the potential for frustration of this purpose if a warrant was required. The Court also stated that inspections for compliance with the Gun Control Act "pose only limited threats to the dealer's justifiable expectations of privacy," noting that "[w]hen a dealer chooses to engage in this pervasively regulated business . . . , he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection." 406 U.S. at 316. *Cf. Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (under statutes conferring on Secretary of Treasury or his delegate broad authority to enter and inspect premises of retail liquor dealers and providing for forfeiture of \$500 in case of refusal of dealer to permit inspection, imposition of fine was exclusive sanction, and officers could not break and enter locked storeroom without a warrant).

92. The Court's entire "diminished expectation of privacy" discussion in *Opperman*

sence of an investigatory motive on the part of the person conducting the search.<sup>93</sup>

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*man* was directed toward automobiles in general. In view of the result reached in *Opperman*, the Court apparently intended the same diminished expectation of privacy to be extended to the contents of a closed, but unlocked, glove compartment. However, a significant question left unanswered by the *Opperman* decision is whether the same reasoning will pertain to a locked glove compartment. The Court's rationale for holding that the search was reasonable in scope suggests that it would not. According to the Court, "once the policeman was lawfully inside the car to secure the personal property in plain view, it was not unreasonable to open the unlocked glove compartment, to which vandals would have had ready and unobstructed access once inside the car." 428 U.S. at 376 n.10. This language indicates that had the glove compartment been locked, the police would not have been justified in forcing it open since the threat of theft or vandalism would have been significantly lessened. Moreover, it would seem that the contents of a locked glove compartment would not be subject to the same "diminished expectation of privacy" that applies to the automobile in general.

A related problem concerns the applicability of the inventory search exception to searches of non-mobile objects, such as suitcases, boxes, or other closed containers. Since none of the justifications put forth by the Supreme Court in *Opperman* for the "relaxed" warrant requirement pertaining to automobiles, *see* notes 38-41 *supra* and accompanying text, can be applied to suitcases or boxes, significant conceptual problems arise when the inventory search doctrine is relied upon to uphold a warrantless search of this type of container. Several lower court cases have applied the rule of *Opperman* in this situation. The question of whether this reasoning is valid will be considered in Part III *infra*.

93. Once a search contains an element of criminal investigatory motive on the part of the police, the policies underlying the warrant requirement come into play. In this situation, *Opperman* does not permit a warrantless search to be upheld under the inventory search exception. Chief Justice Burger emphasized in *Opperman* that there was "no suggestion whatever that [the inventory] . . . was a pretext concealing an investigatory motive." 428 U.S. at 376 (citation omitted). Together with his reference to "subterfuge for criminal investigations" in his discussion of the warrant requirement, *id.* at 370 n.5., it seems clear that, had there been any investigatory motive present in *Opperman*, the Court would not have upheld the warrantless search in that case under the inventory search doctrine.

In this respect, one commentator has observed:

It would appear that one could not allege the existence of probable cause and the conduct of a valid inventory consistently: if an officer has probable cause to believe an automobile contains evidence or contraband, it is doubtful that his purpose in making the search would be to protect valuables. Thus, where subjective intention determines whether subterfuge exists, the slightest hint of reason to believe the car contains contraband or evidence should invalidate the warrantless search as an inventory.

Comment, *The Automobile Inventory Search and Cady v. Dombrowski*, 20 VILL. L. REV. 147, 158 n.55 (1974). Clearly, then, a stringent objective standard is called for in determining whether a particular inventory is a "subterfuge for a criminal investigation." It is not enough to base this determination on the unilateral testimony of the police officer who conducted the search. The danger of "hindsight justification," which, contrary to Justice Powell's assertion in *Opperman*, is present to a considerable degree in many situations involving the inventory search doctrine, would be minimized by applying this standard.

The second inquiry in the analysis of the *Opperman* standard involves a consideration of the circumstances in which a warrantless inventory search will be found to be reasonable under the fourth amendment. As in most determinations of a constitutional "reasonableness" standard, this inquiry involves balancing the rights of the individual against the interests of society and the government.

As noted above, the majority opinion in *Opperman* cited three governmental and societal interests in support of the inventory search.<sup>94</sup> Although the Court did not engage in any balancing process, it must be concluded that a judgment was made that the rights of the criminal defendant must give way to the interests of society in this situation. The significance of this aspect of the decision is that the majority was willing to weigh this balance in favor of the government even though not all three interests were actually at stake in *Opperman*. As Justice Marshall pointed out in his dissenting opinion, under South Dakota law the interest in protecting the police against claims or disputes over lost or stolen property was not relevant to the decision of the case.<sup>95</sup> Justice Marshall also noted that the police did not actually rely upon the "safety" rationale in conducting the search, but sought merely to protect the property in the vehicle.<sup>96</sup> In holding that the search in *Opperman* was reasonable in spite of the absence of two of the three interests supposedly advanced by the inventory search procedure, the Court apparently intended this "reasonableness" standard to be applied across the board, thereby foreclosing any inquiry in future cases as to which of the interests, if any, are actually relied upon by the police. This aspect of the decision unduly minimizes the importance of the individual's fourth amendment right to privacy. Justice Marshall's contention, that the individual's constitutionally protected right to privacy should not be balanced away by "mere possibilities of property interests,"<sup>97</sup> represents a more reasonable approach to the problem of accommodating the competing interests of society and the individual in this situation.

The final element of the *Opperman* "reasonableness" standard is that the inventory search must be conducted pursuant to standard police procedures. This factor ensures that the scope of the search is reasonable, and guards against unrestrained "fishing ex-

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94. See note 19 *supra* and accompanying text.

95. See note 68 *supra* and accompanying text.

96. See note 67 *supra* and accompanying text.

97. 428 U.S. at 395.

peditions" into the interior of the car undertaken in hopes of uncovering evidence or contraband.

### III. THE POST-*OPPERMAN* CASES

Given the failure of the majority opinion in *Opperman* to clearly articulate a standard for the applicability of the inventory search exception, it is not surprising that many of the subsequent cases have failed to apply *Opperman* properly. In general, the post-*Opperman* cases can be grouped into three categories: (1) Those that apply *Opperman* in the context of a criminal investigation,<sup>98</sup> (2) those that extend *Opperman* to uphold searches of non-mobile objects lacking the "diminished expectation of privacy" associated with automobiles,<sup>99</sup> and, (3) those cases that recognize the limitations placed upon the inventory search exception by *Opperman* and apply the doctrine in the proper factual setting or refuse to apply it in an inappropriate context.<sup>100</sup> Unfortunately, the cases falling into the third category appear to represent a minority.

In cases involving searches of automobiles where there is probable cause for a criminal investigation, a major problem has been the failure of courts to recognize the distinction between the inventory search doctrine and the "exigent circumstances" exception of *Carroll v. United States* which was extended in *Chambers v. Maroney*.<sup>101</sup> A discussion of two recent cases, *United States v. Morrow*<sup>102</sup> and *United States v. Speers*,<sup>103</sup> will illustrate the extent to which these two analytically distinct doctrines may be confused.

In the *Morrow* case, the defendant had been the subject of an FBI stolen car investigation. After speaking with the defendant, the investigating agent learned that the automobile Morrow was driving was stolen. He went to Morrow's residence where he observed the stolen car in the defendant's garage. The car was impounded and towed to the nearest FBI garage, where it was searched the next day. At trial, the prosecution introduced into

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98. *United States v. Diggs*, 544 F.2d 116 (3d Cir. 1976); *United States v. Morrow*, 541 F.2d 1229 (7th Cir. 1976), *cert. denied*, 430 U.S. 933 (1977); *United States v. Speers*, 429 F. Supp. 188 (W.D. Okla. 1977).

99. *United States v. McCambridge*, 551 F.2d 865 (1st Cir. 1977); *United States v. Friesen*, 545 F.2d 672 (9th Cir. 1976), *cert. denied*, 97 S. Ct. 2980 (1977); *United States v. Diggs*, 544 F.2d 116 (3d Cir. 1976).

100. *United States v. Jamerson*, 549 F.2d 1263 (9th Cir. 1977); *United States v. Cooper*, 428 F. Supp. 652 (S.D. Ohio 1977).

101. See notes 80-84 *supra* and accompanying text.

102. 541 F.2d 1229 (7th Cir. 1976), *cert. denied*, 430 U.S. 933 (1977).

103. 429 F.Supp. 188 (W.D. Okla. 1977).

evidence several items found in the car. These items included the car's license plate, an admission ticket to a baseball game with the defendant's first name stamped on the back, a piece of paper with a name, address and telephone number on it, and several color photographs of the car. Morrow was convicted for receiving and concealing a stolen motor vehicle in interstate commerce. The Court of Appeals affirmed.<sup>104</sup>

The Court in *Morrow* first justified the seizure of the automobile under the *Carroll/Chambers* "exigent circumstances" doctrine.<sup>105</sup> However, rather than remaining consistent in its analysis, the Court then relied upon *Opperman* to justify the search of the automobile on the following day. After noting that the FBI agent had "reasonable cause to believe that very vehicle was stolen and probable cause to conduct a search,"<sup>106</sup> the Court stated that the defendant's challenge to the search was "authoritatively foreclosed" by *South Dakota v. Opperman*.<sup>107</sup>

Although the search in *Morrow* could have been upheld under the authority of *Chambers v. Maroney*,<sup>108</sup> the Court chose instead to rely upon *Opperman*, apparently assuming that the only prerequisite to the applicability of the inventory search doctrine is that the authorities have lawful possession of the vehicle in question. The Court failed to recognize, or perhaps chose to ignore, that avoidance of the warrant requirement under *Opperman* is properly dependent upon the absence of an investigatory motive on the part of those who conduct the search. Moreover, there was no discussion in the Court's opinion as to whether or not the search was conducted pursuant to standard procedures. Hence, the search could possibly have been invalidated as unreasonable in scope. Put simply, the search in question was not an inventory search, and the Court's reliance upon *Opperman* was erroneous.

Another example of confusion between the *Carroll/Chambers* doctrine and the inventory search doctrine may be found in *United States v. Speers*.<sup>109</sup> There, the two defendants had called a locksmith to a shopping center parking lot to make a set of keys for a

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104. 541 F.2d at 1233.

105. The "exigent circumstances" relied upon by the Court were that the agent was aware that there were at least two males present in the house at that time who could have driven off in the automobile or assaulted him, and that the defendant could have arrived home at any time and moved the automobile. *Id.* at 1232.

106. *Id.*

107. *Id.*

108. See note 83 *supra* and accompanying text.

109. 429 F. Supp. 188 (W.D. Okla. 1977).

van. The defendants attempted to pay for the keys with a Sony TV. The locksmith became suspicious and called the police. A police officer arrived shortly thereafter. After receiving the defendants' permission, he entered the van to examine the TV, where he noticed two white and yellow tablets, which he "suspected" were amphetamines. Without making any field test on the pills, the officer arrested the defendants for possession of a controlled substance. The officer then performed an inventory on the vehicle, which uncovered four additional items of Sony video equipment. The defendants were arrested for the theft of the video equipment. At trial, the defendants moved to suppress the four items found in the inventory search. The District Court denied the defendants' motions.

Employing inconsistent reasoning similar to that used in *Morrow*, the Court rendered alternative holdings in support of its order denying the motions. The Court first upheld the search of the van under the authority of *Opperman*, stating that the search was a "routine, administrative, caretaking inventory . . . invoked by the caretaking role in which the police found themselves after the arrest," and that there was "no contention that this standard procedure . . . was a pretext concealing an investigatory police motive."<sup>110</sup> After having upheld the search under *Opperman*, the Court shifted gears and proceeded to apply the rule of *Chambers v. Maroney*,<sup>111</sup> finding that there were both "exigent circumstances" of mobility and probable cause for an investigatory search present in the facts of the case, and concluding that the warrantless search was "permissible under this long recognized exception to the warrant requirement."<sup>112</sup>

The *Speers* Court demonstrated its confusion by applying two mutually exclusive doctrines to the same factual setting. The *Carroll/Chambers* doctrine requires both exigent circumstances and

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110. *Id.* at 192. The court in this discussion was careful to keep the drug arrest and consequent inventory separate from the criminal investigation which first brought the police to the scene. As in *Morrow*, the court assumed that lawful custody of the vehicle in question automatically brought the three governmental and societal interests furthered by the inventory search procedure into play, thereby mandating the conduct of the inventory search. The court's reliance on *Opperman* is misplaced, however, because contrary to the court's assertion there was considerable evidence of duplicity in the actions of the police. The officers who conducted the on-the-scene criminal investigation simultaneously conducted a purported "caretaking" search of the same vehicle which was the focal point of the criminal investigation.

111. See note 83 *supra* and accompanying text.

112. 429 F. Supp. at 193.

probable cause. The inventory search, on the other hand, occurs after a lawful impoundment, absent exigent circumstances, and is conducted with a "caretaking" motive which cannot exist in the presence of probable cause to believe that a crime has been committed.<sup>113</sup> The police should not be permitted to argue that an unrelated arrest can transform a criminal investigation into an "administrative" procedure, undertaken with a "caretaking" motive. Because of the criminal context in which the search was conducted, the policies behind the warrant requirement were applicable in *Speers*.<sup>114</sup> The search could have been upheld under *Chambers v. Maroney*, but not under *Opperman*. *Speers* makes bad law in that it allows the inventory search exception to be extended beyond the boundaries of *Opperman*. In light of the availability of a legitimate alternative basis for the decision, this result cannot be justified.<sup>115</sup>

A second line of post-*Opperman* cases has extended the inventory search doctrine beyond searches of automobiles to cover searches of non-mobile objects, such as suitcases or boxes. These cases have generally relied upon *Opperman* because the searches were conducted pursuant to standard procedures, after the object searched was lawfully in police custody.<sup>116</sup>

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113. Moylan, *The Inventory Search of an Automobile: A Willing Suspension of Disbelief*, 5 U. BALT. L. REV. 203, 207 (1976).

114. See notes 59-60 *supra* and accompanying text.

115. A potentially more dangerous problem associated with the failure to distinguish between the *Carroll/Chambers* doctrine and the inventory search doctrine is that this type of reasoning would allow the inventory search exception to be applied in situations where the *Carroll/Chambers* doctrine is not available. Thus, where police harbor suspicions amounting to less than probable cause that an automobile contains evidence or contraband, the reasoning employed in *Morrow* and *Speers* would apparently permit a warrantless search under the purported authority of *Opperman* if the police were to acquire lawful possession of the vehicle. In *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968), decided two years before *Chambers*, the Court refused to apply the *Carroll* doctrine in this situation, recognizing that the element of probable cause was essential to the applicability of *Carroll*.

Conversely, where probable cause exists, but the "exigent circumstances" element is missing, a broad reading of *Opperman* would also permit an "inventory" search. However, in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), the Court held that the *Carroll/Chambers* exception is not available unless exigent circumstances are also present. See note 84 *supra*.

It may be shown that these results were not intended by the Supreme Court in *Opperman* by hypothetically altering the facts of that case. If, in *Opperman*, the police knew or suspected that the defendant's car contained marijuana when they towed it, the Supreme Court would not have validated the warrantless search of the car. This is precisely the situation to which Chief Justice Burger was referring when he spoke of a "subterfuge for criminal investigations," 428 U.S. at 370 n.5, and a "pretext concealing an investigatory police motive." *Id.* at 376.

116. See *United States v. McCambridge*, 551 F.2d 865 (1st Cir. 1977); *United*



In *United States v. Friesen*,<sup>117</sup> the defendant was arrested by Oregon State Police upon an outstanding arrest warrant on a charge of interstate transportation of a stolen aircraft. After his arrest he was permitted to gather his belongings from his motel room into two suitcases. After the defendant and his luggage were taken to the police station, the property in the suitcases was inventoried. The defendant moved to suppress those items used as evidence which were obtained as a result of this inventory. The motion was denied, and the defendant was convicted. The conviction was affirmed on appeal. *Opperman* was held to be "dispositive" of the question of the legality of the search of the defendant's suitcases.<sup>118</sup>

In *United States v. McCambridge*,<sup>119</sup> a Washington State Deputy Sheriff stopped the defendant on the highway for "following too closely." After arresting McCambridge on three traffic charges, the deputy approached the car to check for the vehicle identification number, which turned out to be missing. A Washington statute required that the automobile be impounded.<sup>120</sup> When the police wrecker arrived, the deputy removed several items of personal property from the vehicle, including a suitcase, listing those items on an impound sheet. At the police station, the contents of the suitcase were inventoried. The suitcase and its contents were ultimately introduced, over the defendant's motion to suppress, at his trial for an attempted robbery committed in Massachusetts. McCambridge was convicted and the court of appeals affirmed the denial of his motion to suppress. The court cited *Opperman* as giving the sheriff's office the right to search the impounded vehicle, which right "properly encompassed the vehicle's contents, including the stolen suitcase."<sup>121</sup>

These cases treat *Opperman* as establishing a general exception to the warrant requirement for inventory searches without

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*States v. Friesen*, 545 F.2d 672 (9th Cir. 1976), *cert. denied*, 97 S. Ct. 2980 (1977); *cf.* *United States v. Diggs*, 544 F.2d 116 (3d Cir. 1976) (judgment vacated and remanded for further findings regarding standard procedures).

117. 545 F.2d 672 (9th Cir. 1976), *cert. denied*, 97 S. Ct. 2980 (1977).

118. *Id.* at 673. In passing, the court remarked, "Where property is validly held by law enforcement officers for which they may have responsibility, it seems a useless gesture, whether it be an automobile or a suitcase, to require a search warrant to effect an inventory of the property." *Id.* at 673-74.

119. 551 F.2d 865 (1st Cir. 1977).

120. *Id.* at 869.

121. *Id.* at 870. Since the suitcase turned out not to belong to the defendant, the court questioned whether the defendant had standing to challenge its search. *Id.* at 870 n.2.

recognizing that the exception created by *Opperman* was substantially based upon circumstances peculiar to the automobile. As noted above, avoidance of the warrant requirement was possible in *Opperman* because of the combination of the "constitutional difference" associated with automobiles in general and the absence of an investigatory motive in the conduct of the *Opperman* search.<sup>122</sup> None of the reasons given by the Supreme Court in *Opperman* for the "less rigorous" warrant requirement applicable to automobiles is present with respect to objects such as suitcases or boxes. Obviously, there can be no "exigent circumstances of mobility" surrounding an immobile object. Nor is there a "diminished expectation of privacy" associated with such objects, as contrasted with automobiles.<sup>123</sup> Finally, unlike automobiles, suitcases are not subject to "pervasive and continuing governmental regulation and controls."<sup>124</sup>

Whenever an inventory search is performed on an immobile object, one of the two essential preconditions to its constitutionality under *Opperman* is absent. Once this is recognized, it becomes apparent that, absent a substitute justification for a "relaxed" warrant requirement, the constitutionality of the warrantless search rests solely upon the absence of an investigatory motive for the search. As discussed above, a purely "administrative" motive, in

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122. See notes 92-93 *supra* and accompanying text.

123. Significantly, the Court in *Opperman* quoted the following passage from *Cardwell v. Lewis*, 417 U.S. 583 (1974), in support of its "diminished expectation of privacy" discussion:

One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.

*Id.* at 590 (emphasis added). This quotation may be read as limiting the situations in which an individual enjoys a "diminished expectation of privacy" to those in which the object under consideration is in fact essentially "public" in nature and does not customarily serve as the "repository of personal effects." This would apparently exclude suitcases and locked boxes from this category of personal effects. Compare the following language from *Katz v. United States*, 389 U.S. 347 (1967):

[T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of fourth amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.

*Id.* at 351-52 (emphasis added). This quotation has been interpreted as rejecting any distinction between houses and "effects" for fourth amendment purposes. See *United States v. Diggs*, 544 F.2d 116, 133-34 n.26 (dissenting opinion).

124. See *United States v. Cooper*, 428 F. Supp. 652, 654 (S.D. Ohio 1977).

and of itself, will not justify a warrantless search even if conducted in a totally noncriminal context.<sup>125</sup> The inventory search exception cannot be extended, consistent with fourth amendment principles, to searches of immobile objects such as suitcases or boxes.

These cases give some indication of the difficulties encountered by some courts in their attempts to apply the *Opperman* standard. However, one case has stretched *Opperman* far beyond its outer limits by applying the inventory search doctrine to an investigatory search of a locked metal box. In *United States v. Diggs*,<sup>126</sup> the defendant had given a locked box to his wife's uncle and aunt while visiting them for a weekend, telling them that it contained valuable stocks, bonds, and other important papers, and asking them to hold the box for safekeeping. One week later, the uncle learned that Diggs had been arrested for bank robbery in another state. He became suspicious and called the FBI. Two agents arrived at his house late in the evening, and, after corroborating the fact of the robbery, the fact of Diggs' arrest and visit, and the fact that the stolen money had not yet been recovered, proceeded to examine the box. Although a magistrate lived in the same town from whom a search warrant could have been obtained in approximately two hours, the agents made no attempt to procure a search warrant before they opened the box. The box contained \$17,080 in cash, including marked bills from the robbed bank. The district court suppressed the evidence found in the box, holding that the search violated the fourth amendment. The court of appeals vacated the judgment of the district court and remanded for further proceedings in light of *Opperman*.<sup>127</sup>

In a decision that produced four opinions,<sup>128</sup> *Opperman* was misinterpreted in two important respects. First, it was assumed that "[s]ince the agents were lawfully in possession of the box" they were "authorized to make an inventory search."<sup>129</sup> After citing *Opperman* and two of its predecessors, *Harris* and *Cooper*,<sup>130</sup> the

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125. See notes 87-91 *supra* and accompanying text.

126. 544 F.2d 116 (3d Cir. 1976).

127. *Id.* at 126.

128. The prevailing opinion was written solely by Gibbons, Circuit Judge. A plurality of four justices concluded that the search was not unreasonable within the meaning of the fourth amendment. Unable to command a majority, they concurred in the result reached by Judge Gibbons out of reluctance to affirm the judgment of the district court. One justice concurred separately, while four justices dissented upon the ground that the search and seizure was unlawful under the fourth amendment.

129. 544 F.2d at 125.

130. See notes 30-34 *supra* and accompanying text.

court stated that “[n]o principled distinction . . . can be made for inventory search purposes between lawful possession of a car and lawful possession of a box.”<sup>131</sup> After having swept aside one analytical roadblock to the applicability of *Opperman* in such summary fashion, the court then proceeded to consider whether the search was conducted with an “inventory” purpose, noting that “to be justified under the inventory exception, [the search] must in fact have been for that purpose, and not for an investigatory purpose.”<sup>132</sup> The court apparently recognized the distinction between inventory and investigatory searches, but failed to apply that distinction to the facts of the case. Since, at trial, the government had offered no evidence of “standard F.B.I. procedures governing inventories of and receipts for personal property coming into the possession of its agents,” the case was vacated and remanded for further findings on this “critical issue.”<sup>133</sup>

The court erred in assuming that the presence of “standard procedures” could automatically convert a criminal investigation into a “caretaking” inventory search. As the dissenting opinion aptly noted, “nothing in the record before us indicates that the only thing the Agents desired was an inventory of the contents of the box. To the contrary, the Agents were actively seeking contraband, a far cry from the routine inventory search authorized by *South Dakota v. Opperman*.”<sup>134</sup>

The result in *Diggs* should be compared with that reached in *United States v. Cooper*,<sup>135</sup> one of the few cases that has recognized the limits of the inventory search exception, as authorized by *Opperman*. In *Cooper* the defendant was arrested in Tennessee on charges of flight to avoid prosecution in Ohio. Two suitcases were taken separately from Cooper’s motel room and brought to police

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131. 544 F.2d at 125. A factual comparison of *Diggs* with *Friesen* and *McCambridge* reveals that an even more compelling basis existed in *Diggs* for refusing to apply the *Opperman* exception. Whereas the suitcases involved in *Friesen* and *McCambridge* were both used by the defendants in their travels, the box in *Diggs* was placed with a relative for safekeeping. Further, the box was locked, and *Diggs* retained the key, thus demonstrating that he maintained a legitimate expectation of privacy with respect to its contents. This situation is inconsistent with any notion of a “diminished expectation of privacy.” To the contrary, the expectation of privacy which *Diggs* entertained with respect to the box is more closely analogous to that associated with one’s home than is the case when the suitcase or box is put to a “mobile” use, as in *Friesen* and *McCambridge*.

132. *Id.* at 126.

133. *Id.*

134. *Id.* at 133.

135. 428 F. Supp. 652 (S.D. Ohio 1977).

headquarters in Chattanooga. The following morning, an agent of the FBI inventoried the two suitcases. All suspicious items were removed and inventoried, while other items were left in the suitcases. A number of personal checks and blank check books were found in the suitcases. That afternoon, the agent questioned Cooper about the checks, at which time various incriminating statements were elicited from the defendant.

In a separate criminal proceeding, the defendant moved to suppress all evidence taken from the suitcases. The government argued that the evidence was obtained as a result of a valid inventory search under the authority of *Opperman*. The court, in an opinion by District Judge Kinneary, rejected the government's argument and granted the defendant's motion to suppress, concluding that "the government is reading the exception announced in *Opperman* too broadly."<sup>136</sup> The opinion then subjected the *Opperman* decision to a traditional fourth amendment analysis.<sup>137</sup> The Court first discussed the Supreme Court's reasons for upholding the search in *Opperman* "despite the lack of a search warrant," focusing on the "'well-settled distinction' between automobile searches and other searches," which is "predicated on the exigent circumstances resulting from the automobile's inherent mobility, on the continuing contact between law enforcement officials and automobiles, and on the lower expectation of privacy with respect to automobiles in general."<sup>138</sup> Judge Kinneary then discussed *Opperman*'s application of the "reasonableness" standard, under which "an inventory conducted pursuant to specified procedures of the contents of an automobile which would be impounded for an indeterminate period was reasonable in the absence of any concealed investigatory motive."<sup>139</sup>

After having set out the *Opperman* standard, the Court then distinguished *Opperman* factually in several respects. Judge Kinneary first pointed out that the "diminished expectation of privacy" which permits less stringent warrant requirements in the automobile situation is not present in the circumstances surrounding the search of a suitcase belonging to a custodial defendant, and that "[t]here is no 'pervasive and continuing governmental regulation' of suitcases."<sup>140</sup> The Court then refuted the government's argument

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136. *Id.* at 654.

137. See notes 71-74 *supra* and accompanying text.

138. 428 F. Supp. at 654.

139. *Id.*

140. *Id.*

that the search was for the protection of the defendant's property. "The danger of vandalism, which had influenced the *Opperman* decision, is substantially lessened," because, "unlike the automobile, suitcases and similar property are generally kept in a locked room at the police station pending instructions as to proper disposition."<sup>141</sup>

Judge Kinneary also refuted the government's argument that the search was necessary to protect the police from a potential booby-trap by stating that "[n]o sane individual inspects for booby-traps by simply opening the container. Had the FBI seriously believed that the suitcase contained bombs or other explosives, it would have undertaken the search in a much more circumspect manner."<sup>142</sup> Finally, the Court indicated that the facts of the case belied the suggestion that the purpose of the search was to obtain an accurate inventory of the suitcase's contents. Since the only items removed from the suitcase and listed on the inventory sheet were those which the agent thought were indicative of illegal activity, the government's fear of subsequent civil claims was "accordingly reduced to a post hoc rationalization."<sup>143</sup> The Court concluded that "this warrantless search does not fall within the inventory exception announced in *Opperman*."<sup>144</sup>

The *Cooper* court's analysis of *Opperman* succeeded where the majority opinion in *Opperman* failed. It placed the inventory search exception within the general body of fourth amendment law, and clearly set forth the outer limits of the exception. The Court declined to cite *Opperman* as dispositive of the issue of the validity of the inventory search, choosing instead to examine, in turn, each of the government's justifications for the search. This type of analysis, if followed by other courts, could eliminate some of the confusion currently surrounding the inventory search doctrine.

Another case in which *Opperman* was properly applied is *United States v. Jamerson*.<sup>145</sup> In that case, a Washington State Wildlife Agent observed the defendant sleeping in a van parked near a highway. A check of the vehicle's license plate number revealed that the number belonged to a vehicle that had been reported stolen. The agent summoned deputies of the county sheriff's department to the scene, who awakened Jamerson and ar-

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141. *Id.*

142. *Id.* at 655.

143. *Id.*

144. *Id.*

145. 549 F.2d 1263 (9th Cir. 1977).

rested him on a charge of possession of a stolen vehicle. Immediately thereafter, at the scene of the arrest, the arresting officer performed an inventory of the contents of the vehicle. Later that day, the sheriff's department received a call from the van's owner requesting its release. The FBI, which had assumed responsibility for the case, agreed that the van could be returned to its owner after all of the property within it was removed. A deputy then entered the van to remove the inventoried contents. At that time, he noticed a piece of newspaper sticking out from under a mat. He removed the mat and discovered, wrapped up in the paper, two stolen Canadian license plates and several pieces of Canadian identification. These items were subsequently introduced into evidence at trial over the defendant's objection, and Jamerson was convicted. The court of appeals affirmed.<sup>146</sup>

The court noted at the outset that the discovery of the items in question occurred when an officer entered the vehicle to remove the inventoried contents, and not during the course of a search for evidence of the crime charged.<sup>147</sup> After reviewing the Supreme Court's decisions in *Cooper v. California*,<sup>148</sup> *Harris v. United States*,<sup>149</sup> *Cady v. Dombrowski*,<sup>150</sup> and *Opperman*, the court declared that the search which uncovered the evidence was "plainly a routine inventory search made prior to releasing the vehicle to its proper owner and is clearly validated by *Opperman*."<sup>151</sup> As in *Opperman*, "the police were 'indisputably engaged in a caretaking search of a lawfully impounded automobile,'" and there was "no suggestion . . . that 'the standard procedure . . . was a pretext concealing an investigatory police motive.'" <sup>152</sup>

The court in *Jamerson* reached the proper result in light of *Opperman*. Unlike the situation in *United States v. Morrow*,<sup>153</sup> or *United States v. Diggs*,<sup>154</sup> the defendant in *Jamerson* had not been the subject of an ongoing criminal investigation. Unlike *United States v. Speers*,<sup>155</sup> there was no problem of a subterfuge arrest made for the purpose of validating an inventory search. On the

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146. *Id.* at 1265-66.

147. *Id.* at 1267.

148. 386 U.S. 58 (1967). *See also* text accompanying notes 30-32 *supra*.

149. 390 U.S. 234 (1968). *See also* text accompanying notes 33-34 *supra*.

150. 413 U.S. 433 (1973). *See also* text accompanying notes 35-36 *supra*.

151. 549 F.2d at 1271.

152. *Id.* (quoting *Opperman*, 428 U.S. at 376).

153. *See* notes 102, 104-07 *supra* and accompanying text.

154. *See* notes 126-34 *supra* and accompanying text.

155. *See* notes 109-15 *supra* and accompanying text.

contrary, the inventory in question was apparently conducted in furtherance of legitimate governmental objectives, as enunciated by *Opperman*,<sup>156</sup> and appears to have been unrelated to any criminal investigation. The conduct of the police fell squarely within the bounds of *Opperman*.

#### IV. CONCLUSION

It is evident that the *Opperman* decision has spawned a tremendous amount of confusion. The majority of cases in this area decided subsequent to *Opperman* have failed to perceive the limits of the inventory search exception. Before *Opperman* was decided, commentators feared that the inventory search would become a means by which the fourth amendment and the exclusionary rule could be circumvented by courts interested in securing a conviction at the expense of the constitutional rights of the criminal defendant. Cases such as *Diggs* and *Speers* indicate that this prediction is now being fulfilled with ever increasing frequency. The *Cooper* decision is encouraging, but it represents a minority view and is subject to appellate review.

The inventory search doctrine is in a state of disarray. It appears that courts are only too willing to use *Opperman* as a shorthand justification for warrantless searches and seizures rather than engage in more refined processes of legal analysis. This has resulted in a significant weakening of the fourth amendment right to privacy with respect to automobiles and personal effects, such as suitcases and storage boxes.

It is now time for the Supreme Court to take steps to remedy this situation by granting certiorari in a proper case and setting forth the limits of the inventory search exception in terms that will preclude the unwarranted expansion of the doctrine. Until this is done, it can only be hoped that courts will follow the lead of decisions such as *Cooper* and *Jamerson* in recognizing the situations in which the exception can and cannot be applied, so that abuse of the fourth amendment in this area can be halted and the rights of criminal defendants can be protected.

*Philip F. Spillane*

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156. See note 19 *supra* and accompanying text.